

***United States Court of Appeals
for the Second Circuit***



**PETITION FOR
REHEARING
EN BANC**

75-1393

UNITED STATES COURT OF APPEALS
For The Second Circuit

Docket No. 75-1393

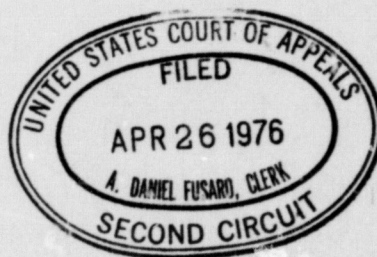
UNITED STATES OF AMERICA ,
Appellee

-against-

JOE TRUMEN BOYD, ET AL ,
Defendant - Appellant

On Appeal From The United States District Court For
The Southern District Of New York

MOTION FOR REHEARING IN BANK FOR
THE DEFENDANT - APPELLANT
JOE TRUMAN BOYD



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Pro Se Counsel For
Defendant - Appellant
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NOW COMES Joe Truman Boyd, acting as his own counsel, (reluctantly) and would respectfully ask the Court for a Re - Hearing In Bank in this case for the following reasons.

1. DUE PROCESS - DENIAL OF COUNSEL

This defendant-appellant has made numerous motions both to Trial Court and Appeals Court for appointive counsel. No counsel has been appointed this defendant-appellant and this defendant - appellant has been broke, and without means to hire counsel, and has so stated to the Courts in this matter. TO DENY THIS DEFENDANT- APPELLANT COUNSEL TO REPRESENT HIM IN THIS MATTER IS CLEARLY A DENIAL OF HIS CONSTITUTIONAL RIGHTS AS GUARANTEED UNDER THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

2. THE PLEDGE TRANSACTIONS ARE (ARE NOT) SALES FOR PURPOSES OF THE SECURITIES ACT

In the Governments Brief under this heading on page 47, paragraph 1, the AUSA states "--relying on McCure v. First National Bank of Lubbock, 497 F.2d 490 (5th Circuit 1974), cert. denied, 420 U.S. 930 (1975). That is not the law in this Circuit. United States v. Gentile, Dkt. No. 75-1283 (2d Cir. Feb. 10, 1976) slip op. 1851, 1858-1860." There is a clear indication of differences between the 5th Circuit and the 2d Circuit Courts on this key pivctol item and should be heard by the entire Court.

3. THE FAILURE OF TRIAL COURT TO RE-INSTRUCT THE JURY AS TO POSSIBLE, CLAIMED EXEMPTIONS TO THE SECURITIES ACT.

"The Court should present any defense raised by the evidence by an affirmative instruction which fully and adequately declares the Law applicable thereto." CJS 79, Supplement, page 463, paragraph 2. (Sparrow v. U.S. Colo., 402 F.2d 826; Frank v. U.S. C.A. Okl., 220 F.2d 559) Also "An Instruction should not be sovague, uncertain, or indefinite as to be of no assistance to the jury." (Edwards v. U.S. , C.A. Okl., 374 F2d 24. Cert. denied S.Ct. 48 389 U.S. 850, 19 L. Ed. 2d 120)

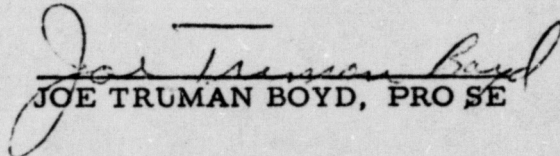
I respectfully submit that "----a defense raised by the evidence ----" was the applications to National Quotation Bureau both very clearly stated that they were being made in reliance on a claimed exemption. The Court not only failed and refused to instruct the Jury on these vital points, BUT, the Jury thought the point so strong that they sent in notes twice asking for clarification on the point; THE COURT REFUSED AND FAILED EVEN TO CLARIFY FOR THE

JURY THIS POINT, over the proper objections of defense. The Courts instructions to the Jury were " vague, uncertain, or indefinite as to be of no assistance to the Jury " when it failed and refused to present the defense raised by the evidence ---" of the applications to the Pink Sheets. In addition to the two applications to the NQB Pink sheets that were introduced into evidence, two of the Governments witnesses testified that they made market on the Stock on reliance on an exemption to the Securities Act.

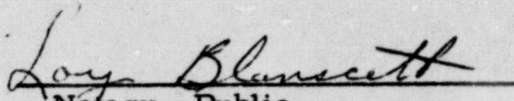
4. MULTIPLE CONSPIRACIES ("BERTOLOTTI")
"Bertolotti" is a decision of this same Court (2d Circuit) . To turn its back on its very own decision is tantamount to saying that there will be different rulings on the same question in different cases, depending upon the Governments desires. Evidence is overwhelming in Select on multiple conspiracies. This decision flies in the face of Bertolotti.

WHEREFORE, Appellant respectfully prays for a RE-HEARING IN BANK on this matter.

RESPECTFULLY SUBMITTED


JOE TRUMAN BOYD, PRO SE

Subscribed and sworn to before me, a Notary Public in and for MIDLAND COUNTY, TEXAS, on this, the 22 day of April 1976


Notary Public